

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA :
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Plaintiff :
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v. : 3:01-cr-00519-JAG-2
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DAVID RENATO NUNEZ-PEREZ (2) :
 :
 :
Defendant :
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STATUS CONFERENCE
VIA VTC

Was held Before HONORABLE U.S. DISTRICT JUDGE JAY A. GARCIA-
GREGORY, sitting in San Juan, Puerto Rico, on August 16,
2024 at 3:50 p.m.

1 APPEARANCES:

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3 FOR THE GOVERNMENT:

4 LUIS VALENTIN, AUSA

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6 FOR THE DEFENDANT:

7 KEVIN LERMAN, AFD

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1 THE CLERK: Criminal Case 01-549, United States of
2 America versus David Renato Nunez Perez for Status
3 Conference. On behalf of the government is AUSA Luis Angel
4 Valentin. On behalf of the defendant is AFPD Kevin Lerman
5 and also connected via VTC is USPO Ricardo Carrillo.

6 THE COURT: Okay and so already made their
7 appearances and you have it on the record. Okay, so let's
8 start with the Public Defender. I'd like to know exactly
9 what is it that you're arguing here. I understand that
10 there's an issue concerning whether supervised release has
11 expired or not or is that a non issue?

12 MR. LERMAN: Good afternoon, Judge Garcia. I'm
13 Kevin Lerman on behalf of Mr. Nunez. Can you hear me okay?

14 THE COURT: I can hear you well.

15 MR. LERMAN: We're arguing there's been a
16 preliminary hearing in this case and there was a joint
17 motion that Mr. Nunez remain in the community under
18 supervision. The question about whether he's subject to any
19 expired term of supervised release arose because when he was
20 released last July, July of 2023, he was released under
21 Federal Rule of Appellate Procedure, Rule 23© in case number
22 19-CV-1555 and so he's on bail pending the Respondent's
23 appeal. So that case is a habeas case under 22 --

24 THE COURT: You're frozen. I don't know what we
25 can do about this.

1 MR. LERMAN: So, our understanding until the case
2 was brought and we believe that was the understanding that
3 Probation had as well. So, until Probation moves to notice
4 alleged violations of supervised release in this case and it
5 went before the Magistrate, it looked like it was still in
6 Rule of Public Procedure 23© proceedings but then what
7 happened was Magistrate Judge McGiverin ordered Probation to
8 file the same motion that's been filed in the civil case in
9 the case before Your Honor and that's when the question
10 arose whether Mr. Nunez is subject to any unexpired term of
11 supervised release and I ask that question because he was
12 released from federal custody on June 20th of 2010 to serve
13 a five year term of supervised release but he was
14 transferred into the Department of Corrections and
15 Rehabilitation of Puerto Rico and at that time he was
16 subject to judgements that turned out according to the order
17 issued by Judge Young to have violated the double jeopardy
18 clause of the Constitution.

19 So, he was essentially released from federal custody to
20 begin that term and our hypothesis and we just spoke last
21 week with the prosecutor in the case and we understand this
22 case is new for him and there's a lot of complexities to it
23 and so we owe the prosecutor a memorandum to discuss that
24 view of the case and so we added that as one of the reasons
25 for staying the request to stay execution of the warrant

1 before Your Honor, which is really the last of the
2 considerations because even if the case is before Your Honor
3 as an unexpired supervision term, even though --

4 THE CLERK: AFD Lerman, you froze. Can you repeat
5 that please?

6 MR. LERMAN: Sure. So, the last argument in the
7 motion to stay the execution of the warrant was included
8 because out of caution because if there is not a term that's
9 before the Court, then the Court wouldn't have jurisdiction
10 to order Mr. Nunez' arrest.

11 That doesn't mean that he's unsupervised out in the
12 world and that he's, you know, at a, you know, a grave risk
13 of, you know, going off the rails. He is supervised by his
14 health professionals and he's under Rule 23 release.

15 So, Respondents -- so, initially as he was released
16 last July in the civil case, Respondents could move to
17 revisit Judge Young's order of release because and I think
18 that part of the confusion arose in this case as to what
19 term Mr. Nunez was subject to was when Judge Young ordered
20 Mr. Nunez released after granting the writ of habeas corpus.

21 He indicated that he'd be subject to the conditions
22 that were imposed in this case and he placed him in the
23 custody --

24 THE COURT: He froze.

25 THE CLERK: AFD LERMAN, can you hear me?

1 MR. LERMAN: Yes.

2 THE CLERK: Your camera froze again and we couldn't
3 hear you.

4 MR. LERMAN: Okay and I'm sorry about that. Is
5 there a way that I could -- I'm on our main connection
6 through the office, so I'm not on wifi or anything. Is
7 there -- oh, actually you know I think I am on wifi.

8 Let me see if I can improve my connection. My
9 apologies. I'm trying to reset my connection here. My
10 apologies. I attempted to reconnect my internet to a more
11 secure connection.

12 THE CLERK: AFPD, we can hear you clearly.

13 MR. LERMAN: Okay. My apologies, Your Honor.

14 THE COURT: No, that's okay.

15 MR. LERMAN: I think that where I left off I was
16 explaining the position with respect to where we stood on
17 where the confusion might have arose when Mr. Nunez was
18 released in the State habeas case and he was released under
19 the conditions that this Court imposed for supervised
20 release.

21 We understood that was just kind of a baseline that the
22 Court was using as a reference point there and if there were
23 to be a violation then the Respondents in that case that
24 warranted a reconsideration of the release order, then the
25 Respondents in that case would be free to move at any time

1 to revoke Judge Young's order releasing Mr. Nunez and so far
2 they haven't made that motion and so instead, the Magistrate
3 ordered Probation to re-file the same motion.

4 So, we've been addressing different needs that have
5 arisen over the last year since Mr. Nunez was released after
6 serving roughly a quarter of a century in State prison in
7 extremely dismal conditions where he contracted liver
8 disease, where he had untreated substance use disorder.

9 So, when he was released, he proactively, without an
10 order from anyone, without an order from the Court or from
11 Probation, and proactively sought treatment through APS,
12 through APS in Manati where he's still a patient. He was
13 there receiving treatment today.

14 He's got an appointment again for next week and he's
15 also receiving treatment through an out-patient provider
16 that's contracted through Probation.

17 So, today we're raising the legal argument as a
18 consideration and as something to keep in mind but our main
19 argument to stay the execution of the warrant is based on
20 Mr. Nunez's demonstrated commitment to his treatment, his
21 very consistent communication with Probation, with his
22 counsel and with his treatment providers. So --

23 THE COURT: Here we go again.

24 THE CLERK: AFD Lerner --

25 THE COURT: Okay, now okay. You were arguing that

1 he was complying with all the conditions, you know, having
2 communication with his Probation but how do you account for
3 these two positive tests to something that is really
4 serious, which is cocaine and fentanyl?

5 MR. LERNER: Yes, Your Honor, and we --

6 THE COURT: Those are dangerous drugs.

7 MR. LERNER: We didn't attempt to -- we haven't
8 attempted to sugar coat any of his issues in our motions or
9 before the Magistrate at any point. The allegation is that
10 he gave positive test results on July 31st and on August
11 6th.

12 Today is August 16th. We cite many provisions from the
13 Guide To Judicial Counsel policy in terms of reacting to
14 such issues, so and we cite a number of non-compliant
15 behaviors which are often seen in somebody with substance
16 use disorder and so what we have is somebody who's imperfect
17 but somebody who is committed to treatment and I think that
18 the record shows his commitment and it shows improvement and
19 so, he's successfully completed two in-patient programs.

20 He's successfully completed an intensive out-patient
21 program and so what the U.S. Courts guidance provides is
22 that one of the steps along the way unfortunately to --

23 THE COURT: This froze.

24 MR. LERMAN: Is someone that's struggling and we
25 see someone whom the Court can summons for a hearing and

1 we'd like the opportunity at least to come with Mr. Nunez to
2 present in front of Your Honor, to discuss what the on-going
3 treatment plans are and the on-going actions.

4 Most importantly, I think is that we don't see someone
5 engaging out in the streets in risky behavior. It's like,
6 for example, alcoholism. You can have someone who suffers
7 from alcohol addiction but is not out in the world fighting
8 with people or, you know, engaging in risky behavior, you
9 know, driving, you know engaging with heavy machinery.
10 That's not the situation that we have here. We have a
11 medical situation that's being treated by medical
12 professionals --

13 THE COURT: Yes, but the problem is that, you know,
14 this was tested and it was sent to a lab, you know, for
15 testing and the objective results show that he actually
16 ingested fentanyl and cocaine. At least that's what
17 Probation says.

18 Now, that doesn't square, you know, with his liver
19 disease. I'm sure that if anything, it aggravates that
20 disease. You see --

21 MR. LERMAN: No, Your Honor.

22 THE COURT: It protects him also from himself,
23 okay.

24 MR. LERMAN: Your Honor, we agree one hundred
25 percent and that's why we believe it's so important to

1 continue treatment with his medical professionals.

2 THE COURT: I know but how do I know that he's not
3 going to be ingesting, you know, even if I decide, you know,
4 that we'll have the preliminary revocation hearing next
5 Friday and this week he's going to be in treatment as you
6 say in Arecibo, whatever?

7 How do I know that he's not going to be ingesting more
8 fentanyl and cocaine and he's going to be here next Friday?

9 MR. LERMAN: Your Honor, I think that what the
10 Court has to look to is whether there is a specific basis to
11 determine that something materially changed since we were
12 last before the Court and the Court last determined that
13 it's worth --

14 THE COURT: Oh, here we go. I think we have a poor
15 connection.

16 THE CLERK: Your Honor, it's his connection.

17 THE COURT: Oh, his connection, okay. Okay, now
18 you're back.

19 MR. LERMAN: I'm so sorry about this.

20 THE COURT: My question is, don't you think that,
21 you know, testing positive twice for fentanyl and cocaine is
22 something that actually changes the whole picture?

23 I mean, I have to give Probation a presumption, you
24 know, that that is correct even though he denies it, you
25 know, but we have two labs that already certified those

1 results.

2 MR. LERMAN: Your Honor, I just have two things to
3 respond to that and again, in one of the conversations that
4 we had with the Probation Officer, he indicated that he's
5 between a rock and a hard place and we agree with that and
6 we have tremendous admiration --

7 THE CLERK: Ah --

8 THE COURT: Here we go. Now, you're out. What
9 happened here?

10 MR. LERMAN: I don't know.

11 THE COURT: My end is coming in. No, okay. Okay,
12 I'll listen to you now.

13 MR. LERMAN: So, Your Honor, we have tremendous
14 admiration and respect for the work that Probation has done
15 and we believe they've gone above and beyond to work
16 collaboratively with Mr. Nunez, which is indicated in one of
17 their motions and so, I think that there is enough, enough
18 there to believe and to hope and have faith that Mr. Nunez
19 has really, you know, seen the light in this struggle.

20 We've seen him come to grips. You know, he had a lot
21 of difficulty and a lot of shame admitting the struggles
22 that he was going through last fall, through the winter,
23 through the spring and, you know --

24 THE COURT: Why is Liliana -- Liliana shouldn't be
25 in now. She's blocking the, you know, yeah.

1 MR. LERMAN: I think that other screen -

2 THE COURT: Yeah, Lilibian try not to -- you know,
3 she's setting up probably the equipment there. Okay, but
4 the thing is that shame is not going to help him become
5 better with respect to health. Okay.

6 If he has a liver disease and he is ingesting these two
7 drugs, I'm sure that his doctor would agree with me that
8 that is counter productive and self destructive.

9 MR. LERNER: We agree with you, Your Honor, and
10 that's why we think, we would like Your Honor, to have an
11 opportunity to meet with Mr. Nunez face to face and we'd
12 like him to have the same thing because, you know, I can
13 represent as an officer of the Court, that I spoke with Mr.
14 Nunez today. He was asking for an adjustment to his
15 medication assisted treatment.

16 He was at APS in Manati. He has a follow up visit next
17 week. You know, this was one of the things that some people
18 are resistant to when they're dealing with Opioid use
19 disorder, is taking medication because they believe they're
20 replacing, you know, one "vicio" with another and so he has
21 overcome that barrier and so it would be, now that he's
22 taking that medication and now that he's working full time,
23 you know, he's not going to be able to fake it.

24 If he continues to use, the Court will know, Probation
25 will know and he'll be out of options. The only option that

1 hasn't been tried in this case is a long term in-patient
2 program and there's been some practical reasons that some of
3 his providers and some of those who are in positions of
4 guidance for him and Probation and those who know him,
5 haven't been, you know, eager to rush him into because of
6 his supportive, you know, equities in the community.

7 You know, he's been able to work full time, so a lot of
8 this is returning to society after, you know, going
9 untreated for a very long period of time in prison.

10 So, it's a very rare situation where someone is so
11 committed to treatment and yet struggling but making
12 progress.

13 So, we're not saying that just shame is what the Court
14 should rule on but with the various, you know, piece of
15 information in the record and from our representations and
16 the representations in the motion, you know, we hope that
17 Your Honor, you know, will consider at least just allowing
18 Mr. Nunez to come to a hearing on his own accord and he's
19 demonstrated that he's responsible to do that.

20 Last time that we had a hearing in Old San Juan, you
21 know, we met with him outside of the courthouse. We went to
22 the hearing. He went through security with the U.S.
23 Marshals. We think that that's really important.

24 He was just released from serving an illegal State
25 sentence and so that trauma of being placed back into U.S.

1 Marshal's custody just to come to a preliminary hearing, we
2 think it's warranted, at least, and the hearing could be
3 next Monday, if Your Honor, wishes just and if there's a
4 determination then that's adverse, you know, we've discussed
5 all options with Mr. Nunez.

6 He's aware of the exposure that he has if this term,
7 you know, is still not expired and there's a basis to be
8 revoked here, you know, we've discussed these options with
9 him.

10 He's informed. He's committed to his recovery and so
11 really the application now is just so that he can present
12 himself personally in court.

13 THE COURT: Okay. Then when you say about a
14 preliminary hearing, are you talking about me or the
15 Magistrate Judge?

16 MR. LERMAN: Your Honor, the rules provide for it
17 with the Magistrate. If Your Honor wished to treat this
18 matter as, you know, a drug court matter, you know, one of
19 the things that we cite from the Judiciary Guide is that
20 there's two parts of the framework in substance use
21 treatment cases.

22 There is sort of the behavior control model which is
23 through, you know, adverse consequences, the removal of
24 privileges, that sort of thing and there is this sort of
25 more motivational model which we think Probation has

1 deployed both very well but to this point, we haven't had an
2 adversarial position with Probation whatsoever.

3 We don't think that it'd be positive to do cross
4 examination, to do discovery and to call his specialist into
5 Court but if that will aid the Court's decision, then we
6 would call as witnesses the doctors who have gotten to know
7 him over the last year.

8 The specialist, you know, we believe that Officer
9 Carrillo has a wealth of mitigating information that he
10 could testify to.

11 So, but if the Court wishes to treat this case as sort
12 of a drug court case in order to continue using the
13 specialists that are most important to Mr. Nunez'
14 recovery, then we would propose that for the Court and that
15 the Court have a hearing and especially for continuity given
16 the complexity of his treatment issues and his health
17 issues, then we would propose that and frankly I wouldn't
18 propose that for everyone but with the responsibility that
19 Mr. Nunez has demonstrated with making it to appointments,
20 with prioritizing his issues, even if he's struggled at
21 times over the last year.

22 THE COURT: I get it. I understand. I'd like to
23 hear Probation's position now.

24 MR. CARRILLO: Good afternoon, Your Honor, and God
25 bless you. Officer Carrillo from the United States

1 Probation Office, for the record. I am the Probation
2 Officer that is supervising Mr. Nunez Perez. As always, we
3 always defer to the decision of the Court.

4 We were following the orders of Judge McGiverin to file
5 the motions in this case. Our only concern with Mr. Nunez
6 Perez is the danger he poses to himself due to his continued
7 use of controlled substances, specifically cocaine and
8 fentanyl.

9 With the last two reported positives, the count rises
10 to around twenty to twenty one positives since being
11 released to the community on July 2023.

12 We, as Counselor Lerman has, AFPD Lerman has stated, he
13 has submitted himself to in-patient treatment with us at
14 Hogar Santisima Trinidad. He also has submitted to two
15 detoxes, one at Hospital San Juan Capestrano and one at
16 Hogar Compromiso de Vida.

17 He has successfully completed all three. That is
18 correct. That is true. He's also successfully completed
19 intensive out-patient treatment at Clinica Medica
20 Psychoterapeutica del Noroeste en Arecibo which is sub-
21 contracted by our office and also is currently receiving
22 mental health treatment at APS Clinics while
23 conjunctively receiving substance abuse treatment still at
24 Clinica Medica Psychoterapeutica del Noroeste.

25 Still, the positives are still there and he still

1 continues to test positive to cocaine and fentanyl, a
2 combination which is colloquially termed as speed ball and
3 that is highly concerning to us since he continues to test
4 positive and we feel that he might be a danger to himself
5 due to all his health risks and also to the community.

6 God forbid under the influences he engages in activity
7 that could be detrimental to the community. Aside from
8 that, he's not a danger, a flight risk. We all agree on
9 that but still his problematic use of substances is
10 concerning to the Probation Office and that's why we have
11 filed the motion, Your Honor.

12 THE COURT: Okay, so you believe that, you know the
13 only way that he will abstain from ingesting this highly,
14 you know, dangerous substances is by confining him to
15 prison?

16 MR. CARRILLO: Again, we recommended that because
17 we have exhausted all our resources in this case unless Your
18 Honor decides otherwise. If Your Honor orders him to submit
19 to a longer term in-patient treatment as AFD Lerman
20 suggests or recommends, again we abide by your orders, Your
21 Honor, as always.

22 THE COURT: Well, the problem is that if he tests
23 positive once more, that would be three and you know what
24 happens when that he tests positive --

25 MR. CARRILLO: Yes and we -- I harken back to what

1 Judge McGiverin told him, told Mr. Nunez at the preliminary
2 hearing held at that same courtroom in which Judge McGiverin
3 stated to Mr. Nunez that if he does not take his health
4 seriously, why would he expect the Court to do the same.

5 We harken back to that and obviously I spoke to Mr.
6 Nunez Perez afterwards in the presence of AAFP Lerman and
7 AAFP Franco Perez.

8 So, again, our recommendation is an arrest warrant but
9 again, as always, we defer to the Court in the decision and
10 will abide by your orders and execute them forthwith, Your
11 Honor.

12 THE COURT: Okay, so you know what we have is two
13 options. That would be, you know, for me to implement the
14 warrant of arrest or you know, order him for an in-patient
15 long term treatment, is that it?

16 MR. CARRILLO: That's your decision, Your Honor.
17 Again, you know our position. We'll always defer to you and
18 we'll execute your order.

19 THE COURT: Okay, well let's do something. I have
20 to hear the government. Let me hear the position of the
21 government and I'll make a decision. Okay.

22 MR. VALENTIN: Thank you, Your Honor. Your Honor,
23 in a nutshell, it seems to the government, after conferring
24 on this matter extensively with the Probation Office, that
25 it has most respectfully over extended the resources, the

1 courtesy and the supervision for what on its face appears to
2 be a very, very serious substance abuse problem by this
3 defendant and with all recognition of any improvements that
4 he has made, just in the last sixty days he has shown that
5 he cannot be trusted.

6 He entered this program. He appeared to be committed
7 to the program and immediately upon being released, went
8 back to the same conduct. It is not only dangerous to
9 himself but dangerous to others who may very well be in the
10 immediate area where the defendant is ingesting or consuming
11 cocaine and fentanyl.

12 That's such a deadly combination, can cause serious
13 impact upon others. Well, let me also focus our attention
14 on the defendant.

15 He is under bail conditions, regardless of his
16 appellate avenues and those bail conditions come with
17 restrictions. They're not to be disposed of or disregarded
18 by the defendant and I don't take saying this lightly
19 because I do believe that every defendant has an opportunity
20 at redemption and those who have a substance abuse problem
21 should clearly be given an opportunity for that treatment
22 but when I look at the remarkable history in this case, in
23 one short year there have been an excess of twenty positive
24 results.

25 There have been at least a combination of serious detox

1 programs, intensive out-patient and mental health
2 treatments. We are at a point where this defendant is
3 naturally committed to the care and the treatment that he so
4 desperately needs and I marvel most respectfully at any
5 request that suggests he should be allowed to roam around in
6 our community to continue to engage in drug use.

7 It is very, very troubling, concerning and dangerous
8 and most respectfully, the government has no other recourse
9 than to respectfully request that Your Honor impose the
10 arrest warrant; that he be taken immediately into custody.
11 If he's not in Mr. Lerman's office, that he surrender
12 himself to the nearest law enforcement agency and that this
13 matter be scheduled as it was previously on September 10.

14 THE COURT: September 10, I'm not going to be here,
15 so it's no September 10th but I was thinking of is having
16 this next Friday, the 23rd at 4:00 p.m.

17 MR. VALENTIN: Well, Your Honor, I will certainly
18 abide by your request. I'm not going to be in the
19 jurisdiction the afternoon of the 23rd. I will be traveling
20 out of the jurisdiction.

21 I can certainly have one of my colleagues fill in but
22 to the government's point, the essential point being that
23 Your Honor imposed an arrest warrant and that arrest warrant
24 was based in large part by the certification of this
25 dedicated United States Probation Officer and also the

1 questionnaire guidance that was given to this defendant by
2 the Honorable Magistrate Judge McGiverin and I recall those
3 words and they were a fair warning, "take care of the
4 priority and in a short month he has not done that and this
5 defendant really needs to be held accountable for that
6 dereliction of his responsibility, not counsel, not the
7 Probation Officer, not I, but he has to be held accountable
8 and I would hate to balance the security and safety of the
9 community, including the defendant's own safety at the
10 expense of giving him a free weekend pass.

11 It's just not appropriate under the totality of this
12 case and the unfortunate continuous pattern of malfeasance
13 on the defendant.

14 When bail conditions are given to a defendant, it is a
15 commitment, a trust that is placed upon him and the Court
16 and Probation and the parties. He has not lived up to that
17 and here's the other thing that concerns the government.

18 When questioned about this, there is a denial of the
19 use which then prompts Probation to use additional resources
20 to confirm that which is apparent to the entire world, that
21 this man is using dangerous drugs, a speed ball on repeated
22 occasions.

23 So, not only is he acquiring this illegal substance,
24 he's making affirmative efforts to acquire it illegally
25 because no one is prescribing this to him and then he's

1 doing it in a way to inject it upon himself or ingest it in
2 a manner that not only exposes him but others close by to
3 serious peril.

4 So, again the United States respectfully requests that
5 the arrest warrant be executed and that the matter be set
6 accordingly. Thank you.

7 THE COURT: Okay.

8 MR. LERMAN: May we respond to that, Your Honor?

9 THE COURT: Public Defender wants to reply.

10 MR. LERMAN: Yes, Your Honor. We'd just like to
11 just briefly respond to both the Probation and the
12 government and I think that it's a little confusing because
13 I know that the motion we filed is a little bit out of order
14 but these arguments that Your Honor is hearing are the type
15 of arguments that should be heard at a hearing with Mr.
16 Nunez and so, the authorization of a warrant is not to
17 authorize imprisonment, that's just to authorize that he be
18 brought to the Court for a hearing and if the Court just
19 issues a warrant, then this whole case goes before a whole
20 new set of people, whoever happens to be on duty and so, the
21 arguments that Your Honor has heard from the government and
22 from Probation, should be heard in person with Mr. Nunez
23 present and what Your Honor hasn't heard from the government
24 especially is a response to our motion filed at 201 and a
25 response that fits within the framework of the Guide to

1 Judiciary Policy because the government is alleging that
2 what should happen is just an arrest and an imprisonment and
3 that's the end of the thing.

4 But that's not what the U.S. Courts Guidance calls for
5 and there's a strong focus on harm reduction, especially for
6 someone who continues to be a willing patient to avail
7 himself of his provider and as the policy guidance provides,
8 the behavioral change process is full of trial and error.

9 That's 650.30.50C1 and that relapse is one of the
10 stages of a predictable process while someone suffering from
11 substance use continues to struggle to achieve stability and
12 that's in Section 620A.

13 So, all of these arguments should be heard before Your
14 Honor and if Your Honor has any concerns based on what Your
15 Honor has heard and what Your Honor hasn't heard from either
16 of the two speakers on behalf of Probation and on behalf of
17 the government is any allegation that Mr. Nunez engages in
18 risky behavior and the analogy that I was trying to make
19 earlier when I got disconnected from the video conference,
20 was there are people who have alcohol problems who never
21 drive drunk and when someone drives drunk, that's when they
22 need to be taken away from the wheel and they also need
23 alcohol abuse treatment.

24 Now, this isn't a situation where there's an allegation
25 that Mr. Nunez is engaging in any risky conduct but the

1 Court could impose a curfew ahead of the next hearing.

2 Our application is all just ahead of the next hearing
3 before Your Honor or before the Magistrate because the next
4 step in following what -- which by the way, which is an
5 unsworn supplemental motion from the government and hasn't
6 been and isn't guaranteed under Rule 11.

7 The next step is a preliminary hearing on that if the
8 Court authorized the warrant. So, the Court can hold a
9 hearing and Mr. Nunez can travel from his home which is over
10 an hour away from the Court and come to Court with everyone
11 who knows this case well, when everyone is available, when
12 Your Honor is available.

13 If Your Honor delegates the hearing to Judge McGiverin,
14 then continuity can focus on the part of the issue which is
15 how to continue treatment for Mr. Nunez while considering
16 all of the other considerations of public safety and health
17 and fairness and justice which is where we started, which is
18 whether there's jurisdiction as it is and so we can --

19 THE COURT: Well, this is what I'm going to
20 do, you know, since you know, I think one week is not going
21 to do too much harm, okay. I'm going to hold the revocation
22 hearing, the final revocation hearing next Friday, okay,
23 next Friday, the 23rd at 4:00 p.m. and meanwhile, you know,
24 I will continue to have this warrant of arrest stayed.

25 However, I trust Counsel that his client is going to be

1 here or would you like for me to issue a summons?

2 MR. LERMAN: Your Honor, we don't believe there's a
3 need for a summons. We'll inform him of the hearing. We'll
4 meet with him ahead of the hearing and we'll arrive to the
5 Court together.

6 THE COURT: Okay, because if he's not here by
7 4:00 p.m. next Friday, the warrant of arrest will be
8 reactivated immediately. Okay, but I would like to hear
9 you. I would like to hear his version. I would like to
10 hear Probation who's going to be here also, you know, for
11 that hearing and then the government can send someone and
12 brief him, you know, concerning this case.

13 So and I am setting it at 4:00 because I believe I have
14 two revocations before that, that's why. Okay. So far
15 they're there, you know, and I would set it before but it
16 has to be at that time. Okay.

17 MR. VALENTIN: Your Honor, may I?

18 THE COURT: Yes.

19 MR. VALENTIN: May we add one item? The government
20 is aware of the Court's ruling as just pronounced. I would
21 respectfully request that Your Honor add as a component to
22 that order, since he has been given a benefit of surrender,
23 that he report immediately to the United States Probation
24 Officer, provide a sample and also be adjusted for an
25 electronic monitoring device.

1 This way we can adequately protect and safeguard the
2 legitimate concerns that have been raised. Given the
3 defendant who is clearly addicted to significant drugs, one
4 week of unsupervised conduct or time period is at the least,
5 incredibly dangerous.

6 So, he should, as counsel pointed he has access to him.
7 He should present himself forthwith today to the Probation
8 Office for the installation of an electronic monitoring
9 device and any other conditions as they deem appropriate to
10 appropriately monitor him.

11 THE COURT: Public Defender.

12 MR. LERMAN: Your Honor, I don't think that the
13 Court has heard a basis for that request and, you know, we,
14 after we filed this motion, we reached out to the
15 government.

16 We asked them to contact us if there were any specific
17 concerns that they had and we think, and we also think, Your
18 Honor, it's not an accurate statement of facts to say that
19 Mr. Nunez is out in the world unsupervised.

20 He works at Experts which has very close and Officer
21 Carrillo I think can correct me if I'm mis-speaking, that he
22 will work full time as usual. He goes to his programs. He
23 lives at his family home.

24 If the Court wished for some sort of consideration like
25 that, it could increase the telephone reporting.

1 We think this is an unnecessary burden to install ankle
2 monitoring. It's an unnecessary cost for Probation. If he
3 were to demand that, you know a very low income gentleman
4 leave his house from the north of Puerto Rico where actually
5 we understand Officer Carrillo is at right now and rush to
6 San Juan to install something electronic.

7 I don't think it has a connection to the issues here
8 and especially given as we covered just the expensive
9 engagement with resources. So, we would oppose, we would
10 respectfully oppose that request.

11 THE COURT: Okay. Can he report to Probation on
12 Monday --

13 MR. VALENTIN: It belies common sense to suggest,
14 "let's set aside an arrest warrant." When Counsel has
15 talked about the significant drug abuse history that his
16 client has, the major concerns raised by Probation and the
17 legitimate concerns raised by the government, this is a pro
18 forma request and the notion that the government has to
19 respond to a late filing by counsel and not submit to the
20 Court for its careful consideration, a basic request to
21 ensure the defendant's safety and the community at large is
22 something in my short time here in the district that I've
23 never heard an attorney say.

24 Having said that, this is a very serious situation
25 involving this defendant's blatant and continued use of

1 drugs in a flagrant manner inconsistent with the Court's
2 order.

3 Your Honor has been over extended and gracious to allow
4 him to surrender on Friday. At the minimum, he should be
5 not inconvenienced because of his economic status but he
6 could be for electronic monitoring which is something that
7 the Court ordinarily would impose in such a situation and by
8 the way, it's not even inconsistent with Judge McGiverin
9 forewarned the defendant.

10 So, it almost seems like the defendant is continuing to
11 get benefit after benefit after benefit, after twenty,
12 twenty positive urines. It is just something that is
13 unconscionable and at the stake of hyperbole, this man is
14 destined to kill himself or someone else.

15 The analogy of alcoholism is quite different. A mere
16 sample of fentanyl can cause the death of an officer who is
17 inspecting that sample, who is near that sample.

18 So, the example is far removed from the reality of this
19 situation. If Counsel has the contact which he has with his
20 client, his client should be on this phone line imploring
21 the Court not to execute that arrest warrant, begging in
22 essence for his continued release.

23 This condition of electronic monitoring pales in
24 comparison to the alternate, which is immediate confinement
25 at the MDC BOP. Thank you.

1 THE COURT: That is reasonable. So, I'm going to
2 order the electronic monitoring of defendant. He's to
3 appear before this Court next Friday at 4:00 p.m. and he's
4 also to appear before the Probation Officer for a sample of
5 substance abuse either Monday or Tuesday or when you can,
6 the Probation can coordinate with him.

7 Okay and then I would like to have full briefing, you
8 know, both by the government and I don't know if Probation
9 has any stance on this, concerning that argument that the
10 Public Defender is making concerning the Court's
11 jurisdiction and I would like to have all those writings by
12 at least the close of business on Wednesday.

13 MR. LERMAN: Understood, Your Honor.

14 MR. VALENTIN: Imposition of the electronic
15 monitoring will also occur on Monday with the surrender of
16 the urine sample. Is that correct?

17 THE COURT: Yes, I would prefer to have it Monday,
18 okay, and counsel for the Public Defender shall see to it
19 that his client complies with the Court order.

20 MR. LERMAN: Understood, Your Honor.

21 THE COURT: Very well. Okay, we will resume, you
22 know, for the final revocation hearing if revocation is
23 justified, you know, next Friday.

24 I also would like to have the Federal Public Defender
25 and your colleague there at the office of the government,

1 you know, prepared to tackle the issues of jurisdiction, if
2 there's any jurisdiction issue of this case because I really
3 don't -- you know, I want to make sure that we do.

4 Okay, meanwhile, you know everything is, you know, the
5 arrest warrant will be stayed but pending, you know, these
6 remedial measures in order to make sure that he complies,
7 you know, with bail conditions set by Magistrate McGiverin.
8 Okay.

9 MR. VALENTIN: Very well.

10 MR. LERMAN: Your Honor, would it be possible also
11 that the just to -- we just want to give notice to the
12 government that we're going to seek disclosure.

13 THE COURT: I can't hear you. I can't hear you.
14 Okay.

15 MR. LERMAN: Yes, Your Honor. So, just giving
16 notice that we're going to seek disclosure by the government
17 of any material supporting its theory whether any social
18 scientists back the proffered statements by the government
19 today.

20 THE COURT: Well, if the government has any such
21 evidence.

22 MR. VALENTIN: I think it is common sense and
23 judicial notice could be taken but we'll reply to the
24 Court's directive and to your memo.

25 THE COURT: Okay, I want everything filed by

1 Wednesday at the close of business, okay. So I can make a
2 proper decision.

3 MR. LERMAN: Thank you.

4 THE COURT: Very well. Thank you for appearing in
5 such short notice.

6 MR. CARRILLO: Your Honor, one more question, if I
7 may.

8 THE COURT: Yes, Probation.

9 MR. CARRILLO: If I may, Your Honor. Can you hear
10 me?

11 THE COURT: Yes, I can hear you.

12 MR. CARRILLO: Do Your Honor still needs the
13 Probation Office's response to the motion filed by AFPD
14 Lerman today by the end of business day?

15 THE COURT: Well, if you think that it would
16 enlighten the Court, you know, to make a proper decision, I
17 would very much like your input.

18 MR. CARRILLO: Well, it's regarding obviously the
19 decision we just discussed on this hearing today, Your
20 Honor.

21 THE COURT: Yes, because I thought you were
22 focusing more on the treatment than any jurisdictional
23 issues, so that's properly an issue for the government and
24 public defender to take care of.

25 MR. CARRILLO: I can barely hear you, Your Honor,

1 sorry.

2 THE COURT: No, no, it's that you know, this
3 jurisdictional issue that was raised by the public defender.
4 It's a matter of law, okay and I don't think you would
5 probably even have to be concerned with anything like that.
6 Okay.

7 MR. CARRILLO: Understood.

8 THE COURT: Your primary concern should be the
9 treatment of defendant and whether he poses some risk, you
10 know, to the community and to himself. Okay.

11 MR. CARRILLO: Understood. You need that my
12 Wednesday?

13 THE COURT: You wouldn't have any objection, you
14 know, if this is justified by Friday, that he continue his
15 in-patient treatment. Okay.

16 MR. CARRILLO: Understood. You need that by
17 Wednesday, then, Your Honor, right?

18 THE COURT: Okay, yes.

19 MR. CARRILLO: Okay, perfect. Thank you very much,
20 Your Honor.

21 THE COURT: Very well. Thank you for appearing in
22 such short notice. Okay.

23 MR. CARRILLO: Thank you.

24 MR. LERMAN: Thank you, Your Honor. Have a nice
25 evening.

1 MR. VALENTIN: Thank you, Your Honor.

2 THE COURT: Thank you all.

3 (The hearing ended at 4:41 p.m.)

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1 U.S. DISTRICT COURT)

2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 34 pages
5 is a true and accurate transcription to the best of my
6 ability of the proceedings in this case before the Honorable
7 District Judge Jay A. Garcia-Gregory on August 16, 2024.

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12 S/Boabdil Vazquetelles

13 Court Reporter

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